

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:F:[REDACTED]:POSTF-109060-02
[REDACTED]

date: June 10, 2002

to: [REDACTED], Territory Manager
Territory [REDACTED], Group [REDACTED]
Attention: [REDACTED], Revenue Agent

from: Area Counsel (Financial Services)

subject: [REDACTED]
Tax Year: [REDACTED]
Forms 872 and 977
I.R.C. § 6501 Statute of Limitations on Assessment Expiration
Date: [REDACTED]

**U.I.L. Nos. 6501.01-05, 6501.08-10, 6501.08-12, 6901.03-01,
6241.00-00R96**

This advice is in response to your request for assistance dated March 7, 2002 in the above-captioned matter with respect to extending the I.R.C. §§ 6501 and 6901 statutes of limitations on assessments of taxes possibly owed for the [REDACTED] tax year of the [REDACTED] insurance company [REDACTED]. You seek this advice because you desire additional time to determine whether a \$[REDACTED] payment made by [REDACTED] during its [REDACTED] tax year to [REDACTED] was, as [REDACTED] claimed on its federal income tax return (Form 1120 PC, U.S. Property and Casualty Insurance Company Income Tax Return), deductible as a return of premiums previously paid by [REDACTED] to [REDACTED].

As is discussed further below, in order to protect these statutes of limitations, we suggest that you (i) immediately secure a Form 872 from the [REDACTED] or his delegate (the "[REDACTED]"), and (ii) secure by [REDACTED] a Form 977 from [REDACTED]. In addition, because I.R.C. § 6902(a) places the burden of proving transferee liability on the Service, we suggest that, at the time you obtain a Form 977 from [REDACTED], you also obtain from [REDACTED] a Form 2045 (Transferee Agreement) acknowledging that it is a transferee.

This advice is not binding on Examination or Appeals and is not a final case determination. This advice is advisory and does not resolve Service position of an issue or provide the basis for closing a case. The determination of the Service in this case is to be through the exercise of the independent judgment of the office with jurisdiction over the case.

FACTS

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modification to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately ten days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

The I.R.C. § 6501 statute of limitations on assessment for the [REDACTED] tax year of [REDACTED] is scheduled to expire on [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On [REDACTED] the [REDACTED] issued an Amended and Restated Opinion and Decision approving a plan of dissolution of [REDACTED] (the "Plan"). The Plan provided for [REDACTED] to pay \$[REDACTED] to an unrelated insurer, [REDACTED] Company ("[REDACTED]"), to assume all of [REDACTED]'s policy liabilities on an assumption reinsurance basis. The Plan also called for the creation of a trust to succeed to all of the assets and liabilities of [REDACTED] by operation of law and wind up its affairs. Further, the Plan provided that once the dissolution of [REDACTED] had been deemed by the [REDACTED] to be "implemented," the trust's assets and liabilities would pass to [REDACTED]. For this purpose, "implemented" was defined to occur upon the [REDACTED]'s reasonable determination, after public notice and hearing, that the obligations of both [REDACTED] and [REDACTED] under the reinsurance agreement related to the policies issued by [REDACTED] have been fulfilled.

Consistent with the Plan, [REDACTED] paid \$[REDACTED] to [REDACTED] and on [REDACTED], [REDACTED] assumed the policies issued by [REDACTED] on an assumption reinsurance basis. However, the trust contemplated by the Plan was never created.

[REDACTED]

[REDACTED]."

[REDACTED], the Liquidation Order (i) appointed the [REDACTED] and his successors in office as the liquidators of [REDACTED] ([REDACTED]) authorized and directed them to immediately take possession of [REDACTED]'s property and liquidate its business and affairs in accordance with [REDACTED] ([REDACTED]) authorized them to deal with the property and business of [REDACTED] in the name of [REDACTED] or in the name of the [REDACTED] as liquidator, and (iv) permanently enjoined and restrained all

others (including [REDACTED]'s officers, directors and employees) from acting on behalf of [REDACTED].

We believe that as of yet the [REDACTED] has not yet transferred to [REDACTED] all of [REDACTED]'s assets remaining after payment of its liabilities. However, we are not sure if this is the case.

DISCUSSION

Statutes of Limitations

I.R.C. § 6501(a) provides generally that the amount of any tax shall be assessed within three years after the return was filed. I.R.C. § 6501(c)(4) authorizes a taxpayer and the Service to agree in writing, at any time prior to the expiration of the statutory period, to extend the period. A Form 872, Consent to Extend the Time to Assess Tax, is used to so extend the period.

I.R.C. § 6901(a)(1)(A) provides, with respect to income tax, that the liability, at law or in equity, of a transferee of property shall be assessed in the same manner as the original income tax liability. I.R.C. § 6901(h) provides that the term "transferee" includes a distributee. Treas. Reg. § 301.6901-1(b) further provides that "transferees" include "an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 368, and all other classes of distributees." [Emphasis added.]

I.R.C. § 6901(c) provides, in part, that the period of limitations for assessment of a transferor's income tax liability against a transferee shall not expire until one year after the expiration of the period of limitation for assessment against the transferor. I.R.C. § 6901(d) authorizes a transferee and the Service to agree in writing, at any time prior to the expiration of the statutory period, to extend the period. A Form 977, Consent to Extend the Time to Assess Liability at Law or Equity for Income, Gift & Estate Tax, is used to extend this statute of limitations.

The existence and the extent of transferee liability are determined under the law of the state in which the transfer occurred. See Burns v. Commissioner, T.C. Memo. 1989-395, citing Commissioner v. Stern, 357 U.S. 39 (1958). Although we have found no [REDACTED] statute, regulation, or case so providing, we believe that [REDACTED] law would impose transferee liability on [REDACTED] to the extent it received assets of [REDACTED] in its role as the creator/owner of [REDACTED], but not to the extent the assets were

received as loans (so long as [REDACTED] was solvent at the time the loans were made). Accordingly, to the extent that the \$ [REDACTED] dollar payment [REDACTED] received in [REDACTED] and the \$ [REDACTED] dollar payments [REDACTED] received in [REDACTED] through [REDACTED] continue to constitute loans, [REDACTED] will not have potential transferee liability with respect to its receipt of those payments. However, to the extent such payments now no longer constitute loans or in the future (including upon the distribution of [REDACTED]'s rights as creditor of the loans) to the State) no longer constitute loans, [REDACTED] has or will have potential transferee liability.

Statute Extensions

With respect to extending the I.R.C. § 6501 statute of limitations, Rev. Rul. 83-41, 1983-1 C.B. 349, provides that the Service generally applies the rules applicable to the execution of original returns to consents to extend the period of limitation on assessment. Thus, the rules applicable to the execution of a Form 1120 PC are used to determine who is authorized to sign a consent to extend the statute of limitations on assessment on behalf of a taxpayer filing such a return. I.R.C. § 6062 provides that a corporate income tax return must be signed by the corporation's "president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act." Rev. Rul. 83-41 further provides that "in states in which a dissolved corporation continues in existence for purposes of winding up its affairs, any authorized officer of the corporation may sign a consent during the period the corporation continues in existence under state law." Finally, Rev. Rul. 83-41 provides that "[i]n states in which a corporation's existence is terminated by dissolution, however, no one may sign a consent for the corporation."

As noted above, [REDACTED] was a [REDACTED] law unincorporated association, rather than a [REDACTED] corporation. Thus, Section [REDACTED] of the [REDACTED], which generally provides that a dissolved corporation will remain in existence for the period in which its affairs are being wound up, does not apply to [REDACTED]. (See also Section [REDACTED] of the [REDACTED] Insurance Law, which provides that Section [REDACTED] of the [REDACTED] does not even apply to corporate insurers.) Accordingly, Section [REDACTED] does not apply to authorize former officers, directors and employees of [REDACTED] to continue to act on its behalf. Indeed, the [REDACTED] Liquidation Order enjoins such persons from so acting.

However, pursuant to the [REDACTED] Liquidation Order, the [REDACTED] is authorized to deal with [REDACTED] in the name of [REDACTED] or in his own name as its liquidator as provided in [REDACTED]

[REDACTED] of the [REDACTED] Insurance Law. Section [REDACTED] thereof provides that:

[REDACTED]

Based on Section [REDACTED], the [REDACTED] is authorized to act on [REDACTED]'s behalf while [REDACTED] continues in existence following the entry of the Liquidation Order. While [REDACTED] law is not clear regarding the period, if any, during which [REDACTED] is deemed to so continue in existence, we believe it likely that the [REDACTED] can so act as long as he has not turned over to [REDACTED] all of [REDACTED]'s remaining assets. As noted above, while we do not believe he has done so, we do not know this for sure. If the [REDACTED] has already turned over to [REDACTED] all of [REDACTED]'s remaining assets, then any Form 872 signed by him at this time would be ineffective.

Nevertheless, no harm would be done by now obtaining a Form 872 from the [REDACTED] so long as the Service (i) does not actually rely on it to extend both of the I.R.C. §§ 6501 and 6901 statutes of limitations and (ii) obtains a Form 977 from [REDACTED] prior to [REDACTED] (the date one-year after the [REDACTED] current expiration date of the I.R.C. § 6501 statute of limitations on assessment of [REDACTED] for its [REDACTED] tax year). This Form 977 may be obtained now. Alternatively, you may defer obtaining this Forms 977 until [REDACTED] approaches. In addition, because I.R.C. § 6902(a) places the burden of proving transferee liability on the Service, we suggest that, at the time you obtain a Form 977 from [REDACTED], you also obtain from [REDACTED] a Form 2045 (Transferee Agreement) acknowledging that it is a transferee.

Finally, because we believe that either (i) [REDACTED] likely now continues in existence (if it has not yet transferred all of its assets to [REDACTED] in [REDACTED]'s capacity as creator/owner), or (ii) [REDACTED] already has or will have substantial potential transferee liability, we suggest that, if in the future you desire additional time to examine [REDACTED]'s [REDACTED] tax year, you thereafter continue to secure new Forms 872 and 977 in tandem as the prior Forms near expiration. If this is done, the applicable

statute(s) of limitations will be kept open regardless of the resolution of the questions of whether [REDACTED] still continues in existence or whether [REDACTED] already has substantial potential transferee liability.

PROCEDURAL CONSIDERATIONS

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time,. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the persons from whom you solicit the consents. You should document your actions in this regard in the case files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, the IRM requires use of Letter 907(DO) to solicit a Form 872 as well as Letter 928(DO) as a follow-up letter to Letter 907(DO). Handbook No.s 25.6.22.3 and 25.6.22.4.1. Dated copies of both letters should be retained in the case file(s) as directed. When the signed Forms 872 are received from the taxpayers, the responsible manager should promptly sign and date them in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 25.6.22.5.10. The manager must also update the respective statutes of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 25.6.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

This advice relates solely to the facts of this case and should not be used or applied to the facts of any other case.

This writing may contain privileged information subject to I.R.C. § 6103. Any unauthorized disclosure of the writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions concerning this memorandum, please
contact [REDACTED] at [REDACTED].

[REDACTED]
Area Counsel
(LMSB Financial Services)

By:

[REDACTED]
Senior Attorney